

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

EFRAIN CRUZ,)	CASE NO. 1:06 CV 2490
)	
Petitioner,)	JUDGE PATRICIA A. GAUGHAN
)	
v.)	
)	
WARDEN TAPIA,)	<u>MEMORANDUM OF OPINION</u>
)	<u>AND ORDER</u>
)	
Respondent.)	

On October 17, 2006, petitioner pro se Efrain Cruz filed the above-captioned petition for writ of habeas corpus under 28 U.S.C. § 2254. Cruz is incarcerated at the Northeast Ohio Correctional Center, having pleaded guilty in 2005 in the Superior Court of Lake County, Crown Point, Indiana, to dealing in marijuana. For the reasons stated below, the petition is denied and this action is dismissed.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). In addition, petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b).

The petition reflects that Cruz has an appeal currently pending in the Indiana Supreme Court concerning his conviction. He

has therefore not yet exhausted state court remedies, and the petition is thus premature.

Accordingly, this action is dismissed without prejudice pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
UNITED STATES DISTRICT JUDGE

Dated: 11/6/06